IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

CRL.A.No. 222 of 2000()

CC.364/1995 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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APPELLANT:

P.K.SUKUMARAN, POTTAKKATTIL HOUSE,
KANYANNUR P.O., CHOTTANIKKARA, ERNAKULAM DISTRICT.

BY ADV. SRI.V.SIVARAJAN
SRI.C.S.MANU

RESPONDENTS:

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1. K.P.GIRIJA, W/O.RADHAKRISHNAN,
"CHAITHANYA", PUTHIYAKAVU,
TRIPPUNITHURA.

2. STATE OF KERALA, REPRESENTED BY ITS PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.K.SURENDRA MOHAN
PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.222 of 2000 (B)

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Dated this the 16th day of August, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.364/1995 in the file of the Chief Judicial Magistrate, Ernakulam, with respect to the offence under Section 138 of the Negotiable Instruments Act, which stands dismissed and the accused acquitted on the ground that the statutory notice issued was returned unserved.

2. It is the case of the complainant that the accused issued a cheque for Rs.1,32,169/- towards discharge of the amounts due from the complainant and that the cheque when presented got dishonoured for want of funds in the account of the accused. It is his case that the accused purposefully did not receive the notice and so the same was returned. It is further submitted that the summons etc. from the court was issued in the same address and the same has been served. It is the settled law that the only way to comply with the statutory formality is to issue notice in

the correct address. Further, the Supreme Court decision in **Alavi Haji v.Muhammed [2007 (3) KLT 77 (SC)]** that the accused cannot raise the contention of non receipt of notice if the amount is not paid within 15 days of receipt of the summons. Hence, I find that the above findings of the court below is only to be set aside.

PW.1, the complainant has testified with respect to the borrowal and issuance of the cheque. He has also produced the impugned cheque and the copy of the lawyer notice issued. PW.2, the bank manager has proved Ext.P6 extract of the account of the accused, which would show that there was no sufficient funds at the time of dishonour of the cheque. Hence, I find that the complainant has proved the execution of the cheque and dishonour of the same for insufficient funds in the account of the accused and that the statutory formalities have been complied with. Hence, the findings of the court below is set aside. The accused is convicted for the offence under Section 138 of the N.I.Act and sentenced to undergo imprisonment till the rising of the court and to pay a compensation of

Rs.1,33,000/- and in default to undergo simple imprisonment for three months.

The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.222 of 2000 (B)

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J U D G M E N T

16th August, 2007